

MARY NAN SPEAR

IBLA 76-362

Decided May 5, 1976

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 14468 (Pennsylvania).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Future and Fractional Interest Leases

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

2. Administrative Practice--Oil and Gas Leases: Applications: Generally--Mistakes: Generally-- Regulations: Generally--Regulations: Waiver

Even if it be established that a controlling regulation had been violated in previous cases, such violation does not afford a valid predicate for further violations of the regulation.

APPEARANCES: Mary Nan Spear, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Mary Nan Spear appeals from a decision of the Eastern States Office, Bureau of Land Management, dated November 21, 1975, rejecting

her noncompetitive acquired lands oil and gas lease offer ES 14468 (Pennsylvania). The decision noted that the United States holds only a 75 percent mineral interest in the lands applied for and rejected appellant's offer because it was unaccompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States.

Appellant's offer was drawn second in the December 1974 drawing of simultaneously filed offers. The first drawn offer had been rejected by decision dated February 6, 1975, and no appeal was taken. Appellant asserts that most BLM offices only require such a statement when the interest of the United States is less than 50 percent, that no notice of the requirement was contained in the list of lands available for leasing, and that the Eastern States Office has previously issued leases to parties whose applications contained no such statement. Appellant states in her appeal that she has no operating rights to the fractional mineral interest not owned by the United States.

[1] The pertinent regulation, 43 CFR 3130.4-4, states:

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected. [Emphasis supplied.]

An oil and gas lease may only be issued to the first qualified applicant. 30 U.S.C. § 226(c) (1970); 43 CFR 3112.4-1. An offer unaccompanied by the statement required by the above regulation must be rejected. The regulation unambiguously requires the statement whenever fractional interests are involved. Appellant's subsequent statement of ownership of operating rights cannot cure the defect where her offer was selected in a drawing from other simultaneously filed offers. Margaret Hughey Hugus, 22 IBLA 146 (1975). The fact that the list of lands available for leasing contained no notice of the requirement for such a statement provides no basis for granting appellant an interest not authorized by law in the public or acquired lands of the United States. 43 CFR 1810.3; James H. Scott, 18 IBLA 55, 57 (1974).

[2] Nor is the requirement for a statement vitiated by appellant's assertion that the Eastern States Office had disregarded the regulation in the past. Such assertion, even if established by

irrefragable evidence, would not serve as a valid predicate for further disregard of the regulation. See Tenneco Oil Co., 8 IBLA 282, 284 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

